IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1266 OF 2005

M/s.Fedders Lloyd Corporation Ltd
& Ors. ..Petitioners.

Vs.

Shri.Bhujanga A. Shetty & anr. ..Respondents.

....

Mr.A.D.Shetty for the Petitioners.

CORAM : DR.D.Y.CHANDRACHUD, J.

5th May, 2005.

P.C. :

1. The Industrial Court has allowed a complaint under Items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 and has held the management guilty of unfair labour practices in not paying to the First Respondent his earned wages onwards from the month of April 2002. Accordingly, there is a direction to the management to pay to the First Respondent his salary commencing from the month of April 2002 until his

services are terminated in accordance with the procedure established by law. Certain consequential benefits have also been granted.

2. The first question which arose before the Industrial Court was whether the First Respondent was a workman. Initially, the First Respondent was appointed by Lloyd Sales Corporation, a sister concern of the First Petitioner, as an Assistant in the Accounts Department with effect from 30th August, 1973. On 15th February, 1989 the Petitioners appointed the First Respondent to the position of an Accounts Officer (Cash) on a salary of Rs.2,300/- per month. With effect from 11th October, 1991 he was designated as a Senior Accounts Executive (Cash). The First Respondent deposed in the course of his evidence that inspite of the change in his designation, the nature of the work that he was performing continued to be the same and that the work was of a clerical nature. The First Respondent stated that his work consisted of writing vouchers for payments made to employees and outside parties either by cash or cheque as sanctioned by the Accounts Manager/Branch Manager, writing receipts for payments received from various

parties by cash or by cheque, writing of cheques to be issued to parties as directed by the Accounts Manager/ Branch Manager, attending telephone calls and making a follow-up of the outstanding bills to be received from third parties and the work of writing of day to day cash books and bank books. The workman deposed that he was not doing any managerial or administrative work; that he had no authority to recruit any employee, to terminate any employee or to take any disciplinary action. No employee was working under him and he was not supervising the work of any employee. The workman stated that he did not have any authority to sanction any leave or to enter into agreements with third parties so as to bind the company. The evidence of the First Respondent was that from April 2002 he was pressurised by the then General Manager and the Chief Executive and Deputy General Manager to resign from service. Since the First Respondent refused to resign, he was not paid his wages from the month of April 2002 in order to pressurise him to leave service. The First Respondent also deposed that payment of medical reimbursement and leave travel allowance at the rate of one months' salary was a condition of

service for all employees of which, again he was deprived. All other employees in the Mumbai branch were being paid their monthly salary, medical reimbursement and leave travel allowance regularly. The First Respondent stated that on 21st July, 2003 he noticed that the Branch Manager was packing up the muster roll in which all employees including the First Respondent used to sign and he was informed by the Manager that he had instructions from the Delhi office to forward the muster roll immediately. Accordingly, the First Respondent was informed that the Manager had instructions not to allow the First Respondent to sign the muster roll. He then stated that from 22nd July, 2003 he was not allowed to sign the muster roll, nor was the muster roll being kept at the Mumbai Branch office. In an affidavit in reply which was filed by the management to an application for condonation of delay, it was sought to be urged that the workman was transferred to the Noida office of the company on 28th May, 2002. The workman deposed that at no stage was any letter served on him transferring him from the Branch office at Mumbai to Noida. In the course of his cross examination, the First Respondent maintained his statement that he had not

received any order of transfer. He stated that if he was paid his unpaid salary he was prepared to report at Noida.

3. A perusal of the evidence of the witness for the management would be material both in regard to the issue as to whether the First Respondent is a workman and on the merits of the complaint. The management's witness who was the Branch Manager stated that when he joined the Bombay office there were four employees excluding him, one of whom was designated as an Assistant Regional Manager "to impress the customers". The First Respondent, the witness stated, was looking after the accounting activities, he was maintaining petty cash, receiving cheques and issuing vouchers to the Delhi office. At the relevant time, some payments were received by the Bombay office while others used to be received at Delhi. Whenever the Bombay office would receive cheques, the First Respondent would issue vouchers and would deposit the cheques in the bank. The First Respondent would similarly make payments against vouchers submitted by employees for expenses incurred on behalf of the company. Some of the payments which were made by the First

Respondent used to be sanctioned by the Branch Manager. The witness admitted that he had no document to show that the First Respondent had sanctioned payments on his own. The witness admitted that the work which was done by the First Respondent confined him to maintain the accounts with the Bombay Office. The witness was unable to state as to what managerial or administrative decisions, if any, were taken by the First Respondent. He was unable to produce any document to show that the First Respondent had any workman under his control. The management's witness admitted that the First Respondent had no authority to recruit any employee, to take disciplinary action, to sanction increments or to enter into contracts on behalf of the company.

4. On this state of the record, the Industrial Court was, in my view, justified in coming to the conclusion that the dominant nature of the work which was performed by the First Respondent was clerical and that his designation as an Accounts Executive (cash) was only a change of nomenclature which did not alter the essential nature of his duties. The workman was essentially

carrying out accounting work. He had no power to appoint any employee, to take disciplinary action against any employee or to bind the company in relation to a third party. The finding of the Industrial Court in this regard is entirely correct and does not warrant any interference.

5. The management came up with a defence before the Industrial Court that the workman had been transferred to Noida on 28th May, 2002. The Industrial Court has carefully considered the evidence in this regard. The witness who deposed on behalf of the management admitted in terms that the order of transfer which was filed by the company in its affidavit in the complaint of unfair labour practices was not served upon the workman and that there was no acknowledgement to the effect that the workman had received the transfer order. The witness admitted that he had not seen the order of transfer at any point of time and that he was unaware of the manner in which the transfer order was issued to the complainant. On this state of the record and in view of the clear admissions of the witness for the management, the Industrial Court was justified in holding that the purported

order of transfer was produced for the first time after the complaint was filed and was only an effort to defeat the complaint. This was held to be an act of victimization on the ground that the workman had declined to furnish his resignation from service. The finding of the Industrial Court is based on the evidence on record. There is no perversity or error apparent. On the contrary the order of the Industrial Court is a reasoned order based on the material on record.

6. In the circumstances, from a perusal of the evidence on the record, it is clear that the management has failed to pay the earned wages of the workman without any justifiable reason. A patently false case was sought to be established before the Industrial Court by producing an order of transfer which was never served on the workman. The Industrial Court has, therefore, justifiably held that the management cannot be excused from its obligation to pay the earned wages of the workman until there is a termination of service in accordance with law. No case for interference is made out. The Petition is accordingly rejected.